

Bureau of Prisons, Justice

§ 541.50

and Acting Regional Director respectively. If neither a digital or simple instrument search, nor an X-ray examination may be used, the inmate is to be placed in a dry cell until sufficient time has passed to allow excretion.

(d) Staff shall solicit the inmate's written consent prior to conducting a digital or simple instrument search, or, as specified in paragraph (c) of this section, an X-ray examination. However, the inmate's consent is not required.

[50 FR 25662, June 20, 1985, as amended at 60 FR 46484, Sept. 6, 1995]

§ 541.49 Review of control unit placement.

(a) Unit staff shall evaluate informally and daily an inmate's adjustment within the control unit. Once every 30 days, the control unit team, comprised of the control unit manager and other members designated by the Warden (ordinarily to include the officer-in-charge or lieutenant, case manager, and education staff member assigned to the unit), shall meet with an inmate in the control unit. The inmate is required to attend the team meeting in order to be eligible for the previous month's stay in the control unit to be credited towards the projected duration of confinement in that unit. The unit team shall make an assessment of the inmate's progress within the unit and may make a recommendation as to readiness for release after considering the inmate's:

- (1) Unit status;
- (2) Adjustment; and
- (3) Readiness for release from the unit. (See § 541.50(a))

(b) The Warden shall serve as the review authority at the institutional level for unit team actions.

(c) An inmate may appeal the Warden's decision to the Executive Panel within five working days of receipt of that decision. The inmate will receive a response to this appeal at the inmate's next appearance before the Executive Panel.

(d) At least once every 60 to 90 days, the Executive Panel shall review the status of an inmate in a control unit to determine the inmate's readiness for release from the Unit. The Executive Panel shall consider those factors specified in § 541.50(a), along with any rec-

ommendations by the unit team and Warden.

The decision of the Executive Panel is communicated to the inmate. Ordinarily, the inmate is interviewed in person at this review. If the inmate refuses to appear for this review, or if there is other reason for not having an in-person review, this will be documented.

(e) An inmate may appeal a decision of the Executive Panel, through the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons within 30 calendar days from the date of the Executive Panel's response.

[49 FR 32991, Aug. 17, 1984, as amended at 60 FR 46484, Sept. 6, 1995]

§ 541.50 Release from a control unit.

(a) Only the Executive Panel may release an inmate from a control unit. The following factors are considered in the evaluation of an inmate's readiness for release from a control unit:

- (1) Relationship with other inmates and staff members, which demonstrates that the inmate is able to function in a less restrictive environment without posing a threat to others or to the orderly operation of the institution;
- (2) Involvement in work and recreational activities and assignments;
- (3) Adherence to institution guidelines and Bureau of Prisons rules and policy;
- (4) Personal grooming and cleanliness; and
- (5) Quarters sanitation.

(b) An inmate released from a control unit may be returned:

- (1) To the institution from which the inmate was originally transferred;
- (2) To another federal or non-federal institution; or
- (3) Into the general population of the institution which has a control unit.

[49 FR 32991, Aug. 17, 1984, as amended at 60 FR 46485, Sept. 6, 1995]

Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

SOURCE: 54 FR 11323, Mar. 17, 1989, unless otherwise noted.

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§ 541.60 Purpose and scope.

In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons may place in controlled housing status an inmate who tests HIV positive when there is reliable evidence that the inmate may engage in conduct posing a health risk to another person.

§ 541.61 Standard for placement in controlled housing status.

An inmate may be placed in a controlled housing status when there is reliable evidence causing staff to believe that the inmate engages in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence.

§ 541.62 Referral for placement.

(a) The Warden shall consider an inmate for controlled housing status when the inmate has been confirmed as testing HIV positive and when there is reliable evidence indicating that the inmate may engage in conduct posing a health risk to others. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to another, or the sharing of needles.

(b) The Warden shall submit a recommendation for referral of an inmate for placement in a controlled housing status to the Regional Director in the region where the inmate is located.

(c) Based on the perceived health risk to others posed by the inmate's threatened or actual actions, the Warden may, with the telephonic approval of the Regional Director, temporarily (not to exceed 20 work days) place an inmate in a special housing status (e.g., administrative detention, or a secure health service unit room) pending the inmate's appearance before the Hearing Administrator. Reasons for this placement, and the approval of the Regional Director, shall be documented in the inmate central file. The inmate should be seen daily by case management and medical staff while in this

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temporary status, and a psychological or psychiatric assessment report should be prepared during this temporary placement period.

[54 FR 11323, Mar. 17, 1989, as amended at 56 FR 31530, July 10, 1991]

§ 541.63 Hearing procedure.

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for controlled housing status. If the Regional Director concurs with the recommendation, the Regional Director shall designate a person in the Regional Office or a person at department head level or above in the institution to conduct a hearing on the appropriateness of an inmate's placement in controlled housing status. This Hearing Administrator shall have correctional experience, no former personal involvement in the instant situation, and a knowledge of the type of behavior that poses a health risk to others, and of the options available for dealing with an inmate who poses such a health risk to others.

(b) The Hearing Administrator shall provide a hearing to an inmate recommended for controlled housing status. The hearing ordinarily shall take place at the institution housing the inmate.

(c) The hearing shall proceed as follows:

(1) Staff shall provide an inmate with an advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis for a recommendation that the inmate be placed in a controlled housing status, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The Hearing Administrator shall upon request of the inmate provide an inmate the service of a full-time staff member to represent the inmate. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select